



COMMITTEE STATEMENT

**Statement in Opposition to Democrats' Amendment in Nature of a Substitute to
H.R. 3110 of Rep. Virginia Foxx, Ranking Member, Education and Labor
Committee, Full Committee Markup:**

**"H.R. 3110, Providing Urgent Maternal Protections for Nursing Mothers Act;
H.R. 2062, Protecting Older Workers Against Discrimination Act"
May 27, 2021**

(As prepared for delivery)

"Committee Republicans are strong advocates of flexible workplace policies that improve conditions for, and empower, working mothers.

"Unfortunately, H.R. 3110 takes an unnecessarily punitive and sweeping approach, creating excessive burdens and penalties for certain employers that are both unworkable and unreasonable.

"The Democrat Amendment in the Nature of a Substitute (ANS) offered at today's markup today fails to address some of the critical flaws in the underlying bill.

"First, it continues to impose the bill's requirements on those businesses that are least able to comply.

"Under existing law, employers with less than 50 employees are not subject to the FLSA accommodation requirements if compliance would impose an undue hardship by causing significant difficulty or expense when considering the size, financial resources, nature, or structure of the employer's business.

"The ANS cuts that threshold by half to 25 employees, exposing more establishments to the flawed requirements in the underlying bill.

“Secondly, the Democrat ANS maintains the language in the underlying bill which markedly expands FLSA remedies for violations. These disproportionate penalties are an inappropriate response to possible compliance violations related to the FLSA’s workplace nursing-mother accommodations.

“The Democrat ANS includes an alternative dispute mechanism which allows employers an abbreviated time frame of 10 days to address an accommodation before penalties apply which unfortunately falls short of what is necessary to ensure employers are able to provide appropriate accommodations to employees.

“The Democrat ANS continues to impose a one-size-fits-all mandate on diverse businesses, including those that operate in remote environments or lack the necessary physical infrastructure to meet the bill’s requirements.

“The Democrat ANS maintains requirements that will negatively impact businesses involved in transportation and agriculture where the nature and location of work is not conducive to the mandates included in the bill.

“For example, the Democrat ANS would require that airline employees, who are currently exempt from these requirements, have access to a space and time for pumping breast milk, despite the fact that aircraft designs are regulated by the FAA for safety and reliability purposes, with limited ability to add additional spaces.

“Remote or rural airports would face unique challenges when accounting for small planes that operate out of these regions including maintaining staffing levels and access to services.

“As recently as 2019, the FAA argued that meal and break rest laws are in conflict with flight personnel duties under FAA requirements.

“In light of these circumstances, air carriers are exempt from current FLSA nursing-mother accommodation requirements. However, these employers accommodate nursing mothers in flight crews in other ways, including extended paid and unpaid maternity leave; temporary accommodations in office jobs on the ground; and the ability to work short regional flights with opportunities to pump milk in between flights on the ground.

“Additionally, the Democrat ANS maintains a questionable scheme that conflicts with current wage-and-hour treatment of break time compensation under the FLSA.

“The ANS changes current law and requires that individuals be entirely relieved from work for a break to be unpaid, with an employee owed compensation for the entire break time in the event that any work is performed—failing to account for the realities of many modern workplaces.

“For instance, passive work time, such as email, phone, or radio monitoring, would trigger the bill’s requirements for compensation, even when these activities occur in small increments. However, the ANS fails to account for the privacy needs of nursing mothers, creating conflicts between maintaining the private nature of time spent pumping breast milk while also requiring employers to monitor whether work is performed or not.

“In summary, the Democrat ANS continues to take an unnecessarily punitive and sweeping approach. The Democrat ANS keeps the one-size-fits-all scheme in H.R. 3110 and treats all nursing mothers and workplaces as if they are the same, despite known differences in employees’ needs, industry-specific challenges, and the ability of certain employers to meet such standards.

“Undoubtedly, nursing mothers working remotely or in unique environments have different needs than those working in an office or a warehouse, yet the Democrat ANS fails to account for those differences.

“I yield back the balance of my time.”

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